



**Appeals Convenor**  
**Environmental Protection Act 1986**

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**REPORT TO THE  
MINISTER FOR ENVIRONMENT**

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**APPEAL IN OBJECTION TO THE DECISION TO GRANT A CLEARING PERMIT  
CLEARING PERMIT CPS 7721/1: CLEARING OF 1.3 HECTARES OF  
NATIVE VEGETATION – MEECHI ROAD RESERVE, GAIRDNER AND  
BREMER BAY, SHIRE OF JERRAMUNGUP**

**PROPONENT: SHIRE OF JERRAMUNGUP**

Appeal Number C002 of 2018

**June 2018**

## Appeal Summary

This report relates to an appeal lodged against the grant of Clearing Permit CPS 7721/1, issued by the Department of Water and Environmental Regulation (DWER) to the Shire of Jerramungup to clear 1.3 hectares (ha) of native vegetation within the Meechi Road Reserve, Gairdner and Bremer Bay, Shire of Jerramungup for the purpose of road widening and maintenance.

In summary, the appellant submitted that the permit should not have been granted as the application area comprises a high level of biodiversity and that the tree hollows utilised by Red-capped parrots should be protected. The appellant was of the view that DWER's assessment of the proposed clearing was flawed in respect to principles (a) biodiversity, (b) fauna and (f) watercourses and wetlands. The appellant also submitted that, should the permit be granted, conditions should also be strengthened and an offset applied.

DWER found that the proposed clearing is likely to be 'at variance' to clearing principle (f) and was not likely to be at variance to the remaining principles. DWER, in noting that the proposed clearing is for road upgrade and maintenance and the permit holder's commitment to avoid and minimise clearing, granted the permit subject to certain conditions including management of weeds and dieback and fauna management and requiring the permit holder to avoid clearing during the breeding season of the Red-capped parrot.

In response to the appeal, DWER noted that the application area is not likely to comprise habitat for any conservation significant fauna and although a portion of the application area may support one species of rare flora, DWER advised that the level of impact within the potential area of habitat would be low due to the size of clearing in relation to the vegetated extent of the available creek line habitat. DWER also advised that while the proposed clearing may impact on riparian vegetation associated with the Devils Creek, it determined that there is unlikely to be any significant environmental impacts.

DWER was of the view that the conditions are adequate to manage the environmental impacts, however made a recommendation to impose an additional condition in relation to the recording and reporting on actions taken in relation to the minimisation of introduction and spread of weeds (condition 8).

Having regard to the information provided in the appeal, the Appeals Convenor considered that DWER's assessment of the proposed clearing against the clearing principles was supported by the available evidence and its decision to grant the permit subject to conditions was justified.

Notwithstanding, the Appeals Convenor, based on DWER's advice, considered that the conditions could be improved by requiring the permit holder to record and report on actions taken to minimise the risk of the introduction and spread of weeds.

## Recommendations

The Appeals Convenor recommended that the appeal be allowed in part, to the extent that the conditions are amended to include a requirement for the permit holder to record and report on actions taken in relation to condition 8 weed control.

It is otherwise recommended that the appeal is dismissed.

## INTRODUCTION

This report relates to an appeal lodged by the Wildflower Society of Western Australia (Inc) (appellant) in objection to a decision of the Department of Water and Environmental Regulation (DWER) to grant a clearing permit to the Shire of Jerramungup (permit holder) to clear 1.3 hectares (ha) of native vegetation within various lots and the Meechi Road Reserve, Gairdner and Bremer Bay for the purpose of road reconstruction or upgrade and culvert installation. The location and extent of the application area are shown in Figure 1.



**Figure 1 – Location and extent (blue hatched area) of application area for CPS 7721/1**

(Source: <https://www.whereis.com/>, <https://cps.der.wa.gov.au>)

## Background

On 9 August 2017, the permit holder applied for a purpose permit to clear up to 0.8 ha of native vegetation within various lots and the Meechi Road Reserve, Gairdner and Bremer Bay and on 2 October 2017, the application was advertised for public submissions for 21 days. One submission was received. Following a revision of the footprint by the permit holder the application was re-advertised on 8 February 2018 for another seven days.

DWER granted Clearing Permit CPS 7721/1 to the permit holder on 15 February 2018, authorising the clearing of up to 1.3 ha of native vegetation. It was against that decision that the appeal was lodged.

This document is the Appeals Convenor's formal report to the Minister for Environment under section 109(3) of the *Environmental Protection Act 1986* (EP Act).

## OVERVIEW OF APPEAL PROCESS

In accordance with section 106 of the EP Act, a report was obtained from DWER in relation to the issues raised in the appeal.

During the appeal investigation, the Appeals Convenor consulted the appellant and provided the permit holder an opportunity to address the matters raised in the appeal.

The environmental appeals process is a merits-based process. For appeals in relation to a DWER decision to grant a clearing permit, the Appeals Convenor normally considers the environmental merits of the assessment by DWER based on principles as set out in Schedule 5 of the EP Act, as well as other environmental factors. Questions of additional information not considered by DWER, technical errors and attainment of relevant policy objectives are normally central to appeals.

## OUTCOME SOUGHT BY APPELLANT

The appellant is seeking for the Minister to overturn DWER's decision to grant Clearing Permit CPS 7721/1, and in the alternative, if the clearing permit is granted, for additional conditions to be included on the permit.

## GROUNDINGS OF APPEAL

The appellant's grounds of appeal are summarised as follows:

- significance of environmental impacts; and
- adequacy of conditions.

### GROUND 1: SIGNIFICANCE OF ENVIRONMENTAL IMPACTS

The appellant submitted that the clearing permit should not have been granted as the application area comprises a high level of biodiversity and that tree hollows found to be utilised by Red-capped parrots should be protected. The appellant was of the view that the proposed clearing is at variance to principle (a) relating to biodiversity and may be at variance to principle (b) relating to fauna. The proponent also submitted that widening the road at the Devils Creek crossing is a contravention of principle (f) and is not required.

Furthermore, the appellant submitted that the proposed clearing is excessive and unnecessary and that DWER should require the permit holder to provide a justification for the removal of vegetation. The appellant noted that there are alternative options that do not require clearing, which should have been considered before the grant of the permit.

This ground of appeal has been considered as follows:

1. assessment against the clearing principles; and
2. justification for the clearing.

### Consideration

#### Assessment against the clearing principles

DWER assessed the proposal against the clearing principles, as set out under Schedule 5 of the EP Act, and found that the proposed clearing 'is at variance' to clearing principle (f) vegetation growing in association with a nearby watercourse and 'not likely to be at variance' with the remaining principles.

### *Biodiversity and Fauna*

The appellant submitted that the proposed clearing is 'at variance' principle (a) as the application area has a high level of biodiversity relative to the size of the area and the quality of the vegetation and the number of native plant species (167 species) recorded during the flora and vegetation survey<sup>1</sup>. The appellant also submitted that the proposed clearing 'may be at variance' to principle (b) as a nesting hollow within the application area is actively being used by a pair of Red-capped parrots, and that this hollow should be protected.

In response to the appeal, DWER advised that its assessment identified two Priority 3 flora species and one rare flora species as being recorded within the local area. Having regard to vegetation and soil types within the area and location of known records, DWER considered that it was unlikely that the two Priority 3 species would occur within the application area.

In relation to the rare flora species, *Boronia clavata*, DWER noted the Department of Biodiversity, Conservation and Attractions' (DBCA) advice that the Devils Creek crossing portion of the application area may support this species, however the impact within the potential area of habitat is likely to be low due to the size of clearing in relation to the vegetated extent of the available creek line habitat. DBCA also advised that this species is known from nine populations within the Albany and Esperance districts consisting of 751 mature plants.

DBCA also advised DWER that assuming the hydrology of the creek line is to be maintained and the potential downstream impacts minimised, the proportional impacts to any potential habitat and the broader conservation of this species is unlikely to be significant.

DWER's assessment identified that a portion of the application area overlapped with mapped occurrence of the Threatened Ecological Community (TEC) '*Proteaceae Dominated Kwongkan Shrublands of the southeast coastal floristic province of Western Australia*' (Kwongkan TEC). Based on DBCA advice, DWER assessed the vegetation against the Approved Conservation Advice which outlines a number of key diagnostic characteristics for vegetation to be considered representative of this TEC. Noting the vegetation type within the application area, DWER considered that the application area is not likely to be representative of the Kwongkan TEC

DWER, in response to the assessment against principle (a), referred to the assessment guidelines<sup>2</sup> ' which identifies instances where clearing of native vegetation is likely to be at variance to principle (a) including:

- clearing of native vegetation that is representative of an area of high biodiversity (e.g. the northern sandplains in the vicinity of Mount Lesueur);
- clearing of a diverse native vegetation remnant that supports the whole, or part of, a significant population of priority flora;
- clearing of a diverse native vegetation remnant that comprises the whole, or part of, a significant occurrence of a PEC;
- clearing of native vegetation that has a higher diversity than other examples of an ecological community in a bioregion; and
- clearing of native vegetation that is in 'degraded' condition yet is in better condition than other vegetation of the same ecological community in the local area (e.g. a largely degraded rangelands ecological community).

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<sup>1</sup> Great Southern Bio Logic (2016). Flora and vegetation surveys of Boxwood Hill – Ongerup Road and Meechi Road. Prepared for the Shire of Jerramungup, 2016.

<sup>2</sup> Department of Environment Regulation. *A guide to the assessment of applications to clear native vegetation under Part V Division 2 of the Environmental Protection Act 1986* (December 2014).

DWER advised that it did not consider that the proposed clearing is consistent with these instances where clearing of native vegetation is likely to be at variance with clearing principle (a).

In relation to fauna, DWER advised that its assessment identified three conservation significant species, the bilby, the quenda and the western brush wallaby as having been recorded in the local area. DWER, noting the linear shape of the application area and that the vegetation types within the application area are well represented locally in conservation reserves, considered that the application area is unlikely to comprise significant habitat for these species.

In relation to the appellants concerns about the Red-Capped parrot, DWER advised that the proponent's supporting documentation identified nine Yate trees (*Eucalyptus occidentalis*) located within the application area, however these did not comprise any significant hollow-bearing branches, and only one tree supported a small hollow with an active pair of Red-capped parrots.

DWER advised that the Red-capped parrot is fairly common and is listed as 'Least Concern' under the IUCN Red List of Threatened Species due to its large range and the trend towards an increase in population. This species is not listed as 'Threatened' under the *Wildlife Conservation Act 1950* or the EPBC Act. It was on the basis of the above that DWER considered that the application area is unlikely to comprise the whole or part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia and considered that the clearing was not likely to be at variance to principle (b).

Notwithstanding the above, DWER advised that in order to minimise impacts from clearing on individual Red-capped parrots during the breeding season, it applied Condition 7, prohibiting the permit holder from clearing between 1 August and 31 December.

#### *Riparian Vegetation at Devils Creek crossing*

The appellant was of the view that widening the road at the Devils Creek crossing will result in the area being more prone to erosion and wash-away, and that the creek being in a deep hollow requires the vegetation to maintain its integrity.

DWER in response to the appeal noted that the Devils Creek crossing is a major drain supported by a culvert/drain channel that is constructed underneath the road. DWER, noting that the native vegetation in this portion of the application area is likely to be growing in association with the creek, concluded that the proposed clearing is likely to be 'at variance' with principle (f).

DWER in noting DBCA's advice, the extent of the application area in the vicinity of the creek and that the existing road already crosses the creek, determined that the proposed clearing is unlikely to significantly impact on native vegetation growing in association with the creek.

#### Justification for the clearing

In relation to the appellant's contention that the proposed clearing is not necessary and alternatives should have been considered, it is noted that under section 51(O) of the EP Act, the CEO shall have regard to planning instruments or other matters considered relevant and DWER advised that the purpose of road widening for safety is a relevant consideration of the CEO. DWER advised that in this case the application stated that the purpose of the clearing is to realign a dangerous curve along the mid-section of Meechi Road.

DWER, while acknowledging the appellant's proposal for other options available to improve the safety of roads and avoid the need for clearing, advised that it assesses applications it

receives on a case by case basis. Furthermore, DWER advised that its function is to conduct an assessment of the proposed clearing area against the clearing principles, identify the environmental values and potential impacts from clearing, and impose conditions to mitigate and minimise these impacts. DWER noted that the permit holder is responsible for planning, building and maintaining the road network in its jurisdiction and advised that the setting of conditions does not include technical engineering standards of roads.

## **Conclusion**

Based on the above, it is considered that DWER's assessment of the permit application against the clearing principles was appropriate, supported by available evidence and undertaken in accordance with policies and procedures.

## **GROUND 2: ADEQUACY OF CONDITIONS**

The appellant submitted that adequate conditions to avoid, minimise or ameliorate clearing were not included on the clearing permit. The appellant also provided a list of recommended conditions to be included, in addition to the current conditions, should the permit be granted.

In summary, the appellant's recommended conditions included:

- application of buffers to clearing for tree hollows being used or have been used by threatened or other avian fauna;
- preparation of detailed plans to provide adequate supervision of clearing;
- additional roadside management and maintenance practices;
- ensure adequate supervision of clearing to prevent over-clearing; and
- publicly available reporting requirements to evidence compliance.

While the appellant noted that it is philosophically opposed to offsets, the appellant sought an offset condition requiring the permit holder to rehabilitate any nearby degraded areas, such as the old road surface at the bend of Meechi Road, and cleared land to the northeast of the bend in the new road.

## **Consideration**

Section 51H of the EP Act provides that clearing permits may be granted subject to conditions considered to be necessary or convenient by the CEO for the purposes of controlling, abating or mitigating environmental harm or offsetting the loss of cleared vegetation.

DWER advised that it granted the permit subject to certain conditions requiring the permit holder to avoid and minimise clearing, implementing weed control and fauna management. DWER advised that it considered that these are adequate to manage to environmental impacts identified during the assessment of the application.

In relation to tree hollows, as discussed under Ground 1, DWER found that hollows within the application area are utilised by a pair of Red-caped parrots and in order to minimise impacts to individual birds, DWER applied a condition prohibiting clearing between 1 August and 31 December to coincide with the breeding season of the Red-capped parrot.

In regard to the appellants submission that conditions should include roadside management practices, detailed plans and supervision to minimise and prevent over-clearing, DWER advised that it encourages applicants to seek opportunities to avoid and minimise the impacts of clearing where possible and has included condition 6 on the clearing permit requiring the permit holder to avoid, minimise and reduce the impacts of clearing. The condition indicates a clear intent that the permit holder should balance the need for the

proposed clearing with other options. Conditions 9 and 10 have been included requiring the permit holder to report and record on efforts made in relation to condition 6. In addition, previous DWER advice in relation to an appeal against Clearing Permit CPS 7563/1 (appeal reference C015/17) noted that DWER is responsible for assessing the environmental values of the area and the impact from the proposed clearing and that it considers that it is the responsibility of the permit holder to ensure that any clearing conducted is compliant with the requirements of the clearing permit.

DWER noted in its response that there is no condition requiring recording or reporting in relation to actions taken to minimise the introduction and spread of weeds, and therefore recommended that a recording and reporting condition in relation to condition 8 weed control be added to the permit.

In relation to the appellant's suggestion to rehabilitate areas of disturbed land to compensate for clearing, DWER advised it considered that this in effect is a type of offset. DWER further advised that through the assessment of the application, DWER determined that the proposed clearing is not likely to have any significant residual environmental impacts therefore, consistent with the *WA Environmental Offsets Policy* (2011), an offset is not warranted.

## Conclusion

Having regard for the above, it is considered that the appeal be allowed in part to the extent that a requirement for the permit holder to maintain records on and report on activities undertaken in relation to condition 8 weed control be included in the conditions of the permit.

In respect to the offset, although the appellant's concerns are noted, it is considered that DWER's finding that the proposed clearing is unlikely to result in any significant impacts is supported by the available evidence and therefore DWER's decision not to require an offset is justified and consistent with the *WA Environmental Offsets Policy*.

## CONCLUSION AND RECOMMENDATIONS

Having regard for the above, and noting that the EP Act does not preclude a clearing permit from being granted where it may be at variance with the clearing principles, it is considered that DWER's assessment of the application against the clearing principles was supported by the available evidence and its decision to grant the permit subject to certain conditions was justified

However, based on DWER's advice, it is considered that a requirement for the permit holder to record and report on actions taken to minimise the risk of the introduction and spread of weeds should be included on the permit.

The final wording of the conditions is a matter for DWER under section 110 of the EP Act.

It is otherwise recommended that the appeal is dismissed.

Emma Gaunt  
APPEALS CONVENOR

**Investigating Officer:**  
Tonya Carter, Senior Appeals Officer